IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6-8-2007

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

W.P.No.20525 of 2002 and 8321 of 2005

R. Perumal ...Petitioner in both petitions

Vs

1. The Joint Registrar of Co-Op Societies,
   Collectorate,
   Virudhunagar.

2. The Deputy Registrar of Co-Op Societies,
   Andal Mela Mada Veedhi,
   Srivilliputhoor.

3. The Special Officer/Administrator,
   Sp.Spl.30, Srivilliputhoor Primary
   Agrocultural Co-operative Bank Limited,
   No.1, NGGO Colony,
   Srivilliputhoor - 626 125 ...Respondents in both petitions

Prayer in W.P.No.20525/2002: This writ petition is filed under Article 226 of Constitution of India, praying this court to issue a writ of certiorarified mandamus calling for the records pertaining to the second show cause notice dated 10.4.2002 issued by the third respondent and quash the same and consequently direct the respondent to permit the petitioner to continue the service with all attendant benefits.

Prayer in W.P.No.8321 of 2005: This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the proceedings dated 12.5.2005 and 29.7.2005 issued by the third respondent and quash the same and forbear the respondents from initiating any action or enquiry in pursuant to the above charge memorandum.

For Petitioner : Mr.G.Ethirajulu

For Respondents 1&2 : Mr.V. Manoharan,
Government Advocate

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For 3rd Respondent : Mr.S.Silambanan,
Sr.Counsel, for
M/s.Silambanan Associates

COMMON ORDER

Both the writ petitions are filed by the very same petitioner challenging the order of final show cause notice dated 10.4.2002 and the charge memo dated 12.5.2005 and 29.7.2005 respectively.

2. Brief facts necessary for disposal of these writ petitions as per the pleadings are that the petitioner was appointed as clerk in the third respondent Society on 16.5.1977 and he worked as Senior Clerk till 31.12.1999. On 11.2.2000, a charge memo was issued containing six charges and on 22.2.2000, the petitioner submitted his explanation. On 1.4.2000 second charge memo was issued. The third respondent conducted enquiry in respect of the charge memo dated 11.2.2000 and the Enquiry Officer submitted his report on 30.10.2000. On 9.11.2000, a show cause notice was issued proposing punishment, for which the petitioner submitted his explanation on 15.12.2000. By order dated 7.3.2001, petitioner was dismissed from service for the said delinquencies. On 28.4.2001, petitioner preferred an appeal before the first respondent and on 29.6.2001, the appellate authority allowed the appeal and remitted the matter for conducting fresh enquiry. On 16.3.2002, enquiry report was submitted after fresh enquiry. The impugned show cause notice was issued on 10.4.2002 calling upon the petitioner to show cause as to why he should not be dismissed from service as the charges were held proved. The said notice is challenged in W.P.No.20525 of 2002.

3. On 11.8.2004, an enquiry notice was issued for conducting enquiry under section 81 of the Tamil Nadu Co-Operative Societies Act, 1983 and on 1.2.2005 enquiry report under section 81 was submitted. On 12.5.2005 charge memo was issued on the basis of the enquiry report, conducted under section 81 of the Act. Another charge memo was issued on 29.7.2005. Petitioner also challenged the earlier suspension order in W.P.No.8313 of 2005, which was allowed on 22.9.2005 with liberty to pass fresh orders. Petitioner was reinstated in service on 10.10.2005 and again he was placed under suspension on 27.10.2005. The subsequent order of suspension dated 27.10.2005 was challenged in W.P.No.9991 of 2005 and an interim stay was obtained. The said writ petition was allowed on 10.4.2006. As against the orders passed in the above writ petitions, the third respondent filed W.A.Nos.96 and 201 of 2006 before the Madurai Bench of the Madras High Court. The said writ appeals were allowed by a Division Bench by order dated 19.7.2007, holding that under the bye-laws of the Bank, it has got

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powers to suspend the petitioner pending domestic enquiry and also on the basis of the decision of the Larger Bench of this Court reported in 2006 (4) CTC 689 = 2006 (4) LW 495 (K.Marappan v. The Deputy Registrar of Co-Operative Societies, Namakkal & Another) wherein it is clearly held that the writ petition against Co-Operative Societies is not maintainable. Thus the petitioner is now under suspension.

4. In these writ petitions, the third respondent filed counter affidavit wherein it is stated that the petitioner participated in the fresh enquiry after the earlier order having been set aside and he was given reasonable opportunity and was found guilty of all the six charges, based on which the show cause notice was issued on 10.4.2002 for which also petitioner submitted his explanation on 26.4.2002 and without waiting for the orders to be passed considering the explanation submitted, petitioner has chosen to challenge the show cause notice and obtained interim stay and thereby petitioner stalled all further proceedings. It is also stated in the counter affidavit that the petitioner has rushed to this Court and challenged the orders of suspension in W.P.No.8312 of 2005 and 9991 of 2005 before the Madurai Bench and the said suspension orders having been quashed, writ appeals were filed and the writ appeals were allowed, specifically holding that no writ is maintainable against the Co-Operative Societies and therefore the present writ petitions are also not maintainable. It is also stated that the writ petitions are premature and the same may be dismissed.

5. The learned counsel for the petitioner submitted that no duty is cast upon the Clerk of the Society to sanction loan and no subsistence allowance was paid to the petitioner during the period of suspension and therefore the enquiry conducted and the consequential show cause notice are liable to be set aside. The learned counsel also submitted that before accepting the Enquiry Officer's report, the view of the petitioner was not obtained by the Disciplinary Authority and charge memos were issued in 2005 for the allegations of the year 1988 and hence the charges are to be quashed due to the delay in initiating the disciplinary proceeding.

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6. The learned Senior Counsel for the third respondent submitted that the writ petitions are not maintainable as no statutory violation is pointed out by the petitioner to entertain these writ petitions against co-operative society. The learned Senior Counsel also submitted that there is no prejudice to the petitioner and the same is not pointed out for the non-payment of subsistence allowance and there is no pre-judging of the issue and it is only a show cause notice and if the petitioner's reply is convincing to the third respondent, it may be accepted and before

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passing any order, challenging the show cause notice is premature. The learned Senior Counsel further submitted that the petitioner can very well point out any prejudice or laches, if any, while submitting the explanation for the said charge memos and if convincing explanation is given to the said charge memos, the third respondent may accept the same and there is a possibility of dropping the charges itself. The learned Senior Counsel further submitted that challenging the charge memos before furnishing explanation is premature and lack of jurisdiction having not been raised, writ petition filed challenging the charge memos and show cause notice are not maintainable.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as respondents.

8. The point in issue is whether the writ petition filed challenging the show cause notice and the charge memos are maintainable on the facts of these cases.

9. The petitioner submitted explanation to the show cause notice. Insofar as the delay in issuing charge memo are concerned, the third respondent explained the same in the counter affidavit in paragraphs 15 to 19, which read as follows:

> "15. In the meanwhile the records relating to the financial year 1997-1998 were in the custody of CCIW. Thereafter the records were forwarded to the Judicial Magistrate II, Virudhunagar. The 3rd respondent herein filed a petition before the JM-II seeking for copy of the entire documents with the Court for audit purpose.
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> 16. It is submitted that the audit department when it perused the documents gave a report stating that other irregularities relating to 6 other loans issued by the writ petitioner have not been enquired into and were not the subject matter of earlier charges. Hence the audit recommended to the Deputy Registrar to take appropriate action.
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> 17. It is submitted that the Deputy Registrar ordered an enquiry under Section 81 of the Cooperative Societies Act. On 20.9.2004 the enquiry office submitted a report stating that Perumal and the then Board of Directors are responsible for the irregularities and recommended disciplinary action against the petitioner Mr.Perumal and others and to initiate recovery proceedings against the then Board of Directors. Action

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against the Board of Directors is pending after they have been arrested and enlarged on bail.

18. It is submitted that the Government was given to understand that irregularities have been committed in various societies in the State regarding the agricultural loan. Hence orders were issued to go into the agricultural loan in all societies in October 2004. Accordingly the agricultural loan in the 3rd respondent society was scrutinised by the Cooperative Sub-Registrar who discovered that the irregularities have been committed against three agricultural loans by the writ petitioner Mr.Perumal and recommended action.

19. Hence the Special Officer of the 3rd respondent issued a show cause notice dated 12.5.2005. The petitioner submitted his explanation on 2.6.2005. Since the explanation was not satisfactory the 3rd respondent bank issued a charge memo to the petitioner dated 29.7.2005. The said charge memo consisted of the earlier stated irregularities committed by the petitioner relating to 6 consumer article loans of Rs.3,56,066/- and the irregularities committed in regard to the 3 agricultural loans of about Rs.97,617/-."

If the petitioner still feels that there is laches, the petitioner can state the same in his explanation. The dropping of the surcharge proceeding under section 87 of the Act and acquittal in the criminal case, cannot be a ground to quash the impugned orders.

10. A Division Bench of this Court in W.A.No.96 and 201 of 2006 dated 19.7.2007 has taken a decision between the same parties that the writ petition against the third respondent Co-Operative Society is not maintainable as held by the larger bench of this Court in the decision reported in 2006 (4) CTC 649 = 2006 (4) LW 495 (K.Marappan v. The Deputy Registrar of Co-Operative Societies, Namakkal & Another), while upholding the suspension orders. It is relevant to note that even if there is any statutory violation, the same can be pointed out before the third respondent and only after final orders are passed, petitioner will get cause of action to challenge the same.

11. The charges levelled against the petitioner includes misappropriation of funds of the bank in both these cases. The

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above said charges are serious and the Division Bench also took note of the serious charges and upheld the order of suspension.

12. (a) The Supreme Court in the decision reported in *(1987) 2 SCC 179 (State of U.P. v. Brahm Datt Sharma)* held that writ petition against show cause notice is not maintainable. In paragraph 9 of the judgment, the Supreme Court held as follows:

> "9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. 'The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice."

(b) In *(1996) 1 SCC 327 (Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh)* in paragraph 10, the Apex Court held thus,

> "10. We are concerned in this case, with the entertainment of the writ petition against a show-cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a 'nullity' or totally "without jurisdiction" in the traditional sense of that expression — that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the

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Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show caus e against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

(c) In *(2004) 3 SCC 440 (Special Director v. Mohd. Ghulam Ghouse)* in paragraph 5 the Supreme Court held as follows:

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. ....."

(d) In the recent decision of the Honourable Supreme Court reported in *AIR 2007 SC 906 (Union of India & Another v. Kunisetty Satyanarayana)* in paragraph 13, the Supreme Court held as follows,

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause

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notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001 (10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc."

13. In the present cases, the lack of jurisdiction of the third respondent is not the issue. Insofar as the contention that by issuing show cause notice third respondent has pre-judged the issue is unsustainable because the said statement is only a provisional conclusion subject to variance, after getting reply from the petitioner. The charge memos are challenged only on the ground of laches. The grievance of the petitioner, if any due to the alleged laches, can also be pointed out before the third respondent by submitting explanation and only after consideration of the same by the third respondent, the petitioner can agitate his claim before the appropriate forum.

14. In view of the above, I am of the view that the writ petitions are premature and the impugned orders cannot be interfered with. It is made clear that the merits of the contentions by the petitioner in the above writ petitions are not decided in any manner in this order and the writ petitions are dismissed only on the ground of maintainability as well as premature nature of the relief sough for.

15. In W.P.No.20525 of 2002, the petitioner has already submitted his reply on 26.4.2002 and it is open to the third respondent to consider the same and pass final orders. Insofar as W.P.No.8321 of 2005, the petitioner has not submitted explanation for the charge memos and only interim explanation was submitted on 1.9.2005 seeking further time to submit detailed explanation. Therefore petitioner is given four weeks time from the date of receipt of copy of this order, to submit his explanation to the impugned charge memos.

16. The writ petitions are dismissed with the above observations. No costs. Connected W.P.M.P.Nos.12601, 12602 and 12603 of 2006 are also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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   No.1, NGGO Colony, Srivilliputhoor - 626 125

+2ccs to M/s. G.Ethirajulu, Advocate Sr 48904, 48993
+1cc to the M/s.S.Silambanan, Advocate Sr 48745

MS (CO)
km/14.8.

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